

October 10, 2017

The Honourable Chris Ballard  
Minister of the Ministry of the Environment and Climate Change  
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Dear Minister Ballard:

## **Re: Proposed hydro-electric generating station at the Bala falls**

### **Background**

Decisions by the Environmental Review Tribunal issued on October 7, 2016 and August 16, 2017 for a proposed project to construct eight 45-storey-tall wind turbines too close to two Collingwood airports stated:

*As the Tribunal has found that engaging in the Project in accordance with the REA will cause serious harm to human health, and neither the Approval Holder nor the Director have proposed effective means to mitigate this harm, the Tribunal finds that it is in the public interest to revoke the REA under s. 145.2.1(4)(a).*

That is, for the proposed Collingwood project, the MOECC:

- Failed to fulfill its obligation to protect human health. The “root cause” appears to be that as the MOECC did not obtain the expert input needed for their environmental assessment, the MOECC staff did not act on the complexities of the situation and the resulting unacceptable risks to human health.
- Could not defer this safety requirement to some future date and unknown consultant and safety plan, which the MOECC had specified as Condition O1 in their February 11, 2016 Renewable Energy Approval.

As a result, the Environmental Review Tribunal revoked the REA previously issued by the MOECC. To have the ERT revoke an REA shows the government was found to have acted incorrectly. This is not only an embarrassment to the MOECC, but as this was literally a “life and death” issue shows the government must deal with this confirmed gap in the MOECC’s internal public safety assessment procedures.

It can be expected that from time to time the MOECC will not internally have the expertise needed to assess public safety issues, for example, when specific aviation or in-water recreation safety procedures and knowledge is required. The unaddressed systemic problem is that the MOECC does not have the policies and procedures to determine when they need to secure such expertise from other than the traditional resources of Transport Canada and the Ministry of Natural Resources and Forestry.

There are few organizations in Canada with the recognized expertise to assess risks to in-water recreation:

- One is the *Lifesaving Society*, whose Aquatic Safety Audit report found that the proposed Bala project would: “create extreme new dangers”, and therefore

recommended that plans to safely operate this proposed project be presented to stakeholders and approved **before** any further approvals are issued.

- Another is the *Canadian Dam Association*, who have published *Guidelines for Public Safety Around Dams, 2011*. The proponent's plans would not comply with these requirements.

## The Precautionary Principle

Clearly, the expertise is available, but the MOECC has not been able to cite **any** expertise utilized in their decision to accept the proponent's claim they will be able to figure out public safety later. For a matter of life-and-death, this is unacceptable. Therefore, the MOECC should:

- In the short-term, utilize the well-established *precautionary principle*, and require the proponent show how their proposed generating station could be operated safely. To be meaningful, this must be done **before** any construction can commence, in case any design changes are needed or it is found the proposed project could not be operated safely.
- In the longer-term, an inventory of the in-house expertise of the MOECC, MNRF, and Transport Canada need to be documented so MOECC staff can develop a procedure to deal with future similar situations, and know when they must obtain expertise from other sources.

## The MOECC's responsibilities include Public Safety

The Environmental Assessment Act requires that the MOECC's decisions must be: "*providing for the protection ... of the environment*", and *environment* is defined as "*including human life*". The ERT found that the MOECC had not fulfilled this fundamental obligation, so reversed the MOECC's decision.

Three of the six parties that appealed the MOECC's REA to the Environmental Review Tribunal were local municipalities, and they reported they spent a total of \$800,000 in legal fees, which they will now be looking to recover from the MOECC and proponent. In a press release dated September 19, 2017, the Clearview Township Mayor stated: "*It's unfortunate that the province and this process forced the municipality to contribute such significant resources towards an issue that could have been addressed through proper consultation and deliberation*".

Minister Ballard, you now have your opportunity to avoid embarrassment for a failed project, knowing that there would be no obligation to pay any costs or penalties to the proponent, as they:

- Do not yet have the construction approvals they need.
- Have not started any construction work (they have started some **pre**-construction work, which was their business decision, knowing they did not yet have all approvals required).
- Have made so many changes to the plans which your Ministry approved in 2013 that the Ministry need only inform the proponent that they must submit an Addendum.

## Our requests

- 1) What procedural changes are being made to the MOECC's public safety assessment process as a result of the ERT's decision to revoke the MOECC's approval for the proposed Collingwood wind turbine project.
- 2) We request to meet with you, and note that we have still not received a response to our two previous meeting requests (in our; letter to you dated August 22, 2017, and e-mail sent to you September 1, 2017).  
If you are not available this week, then we request to meet with Deputy Minister Paul Evans this Thursday afternoon, or Friday morning.
- 3) The above concerns are solely those of the MOECC, so please do not suggest we contact the MNRF or proponent.

I look forward to your response.

Sincerely,



Mitchell Shnier, on behalf of SaveTheBalaFalls.com

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